IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1772 OF 2004

M/s. Kantilal and Co.and anr. ..Petitioner
vs.
Municipal Corporation of
Greater Bombay and Ors. ..Respondents.

Mr. Engineer i/b. M/s. Zohair and Co. for the petitioner.

CORAM: S.U. KAMDAR, J.

DATE : 23RD DECEMBER, 2005.

P.C. :

1. The order dated 16.11.2005 is recalled and substituted by the following order :

(i) The learned counsel for the petitioner states that in view of the fact that the constitutional validity of Section 217 of the Bombay Municipal Corporation Act, 1888 as amended by the Maharashtra Municipal Corporation Amendment Act, 1975 is already been determined, he is not pressing the same. The learned counsel for the

petitioners however states that two indulgences may be grantee that respondent no.3 be permitted to be added as party respondent to the pending appeal. It is made clear that if the said application is made then the learned Judge of the Small Causes Court at Bombay will consider and decide the same in accordance with law.

(ii) However the learned counsel for the petitioner states that the dismissal of the appeal is for non-deposit of the amount and that he is ready and willing to deposit the same if the time is granted. Accordingly the impugned order dismissing the appeal is set aside. Appeal is restored. Time to deposit is granted for a period of six months from today. In an event if the deposit is not made within the aforesaid period, the appeal to stand dismissed. If

the amount is so deposited then the petitioner will be at liberty to add respondent no.3 who is party in the present petition as a party to the said appeal and appeal will be heard on its own merits in accordance with law.

(iii) Mr. Balsara’s appearance be deleted for the plaintiffs in the order dated 16.11.2005. With the aforesaid directions, petition is disposed off accordingly.

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